state rates were void when Congress through the Interstate Commerce Commission had acted on the matter, the court did not expressly decide that those rates were unconstitutional without such regulation. But if the Interstate Commerce Act gives to the Commission the power to vary such rates this would seem to be such action by Congress as would exclude any state regulation previously permissible.

LANDLORD AND TENANT — RENT — CONSTRUCTIVE EVICTION AS DEFENSE TO ACTION FOR RENT. — The lessee of an apartment left before the end of the term because the stench from dead rats in the walls made the place untenantable. In an action for rent for the remainder of the term, he pleaded these facts as amounting to a constructive eviction. *Held*, that this plea is a good defense. *Barnard Realty Co.* v. *Bonwit*, 139 N. Y. Supp. 1050 (Sup. Ct., App. Div.).

It is well settled that eviction discharges the duty to pay rent. *Sully* v. *Schmitt*, 147 N. Y. 248, 41 N. E. 514; *Bass* v. *Rollins*, 63 Minn. 226, 65 N. W. 348. But the cases seem confused as to what facts may constitute an eviction. Some courts have held that a breach of covenant by the landlord causing the premises to become untenantable and the tenant to leave, will be sufficient. *Bass* v. *Rollins*, *supra*; *Lawrence* v. *Mycenian Marble Co.*, 1 N. Y. Misc. 105, 20 N. Y. Supp. 698. *Contra*, *Lunn* v. *Gage*, 37 Ill. 19. By others, however, it has been said that the tenant must leave because of affirmative acts by the landlord. See TIFFANY, LANDLORD AND TENANT, 1271; *Huber* v. *Ryan*, 26 N. Y. Misc. 428, 56 N. Y. Supp. 135. The better view would seem to be that if the landlord is under any duty in regard to the leased premises, the violation of which amounts to a tort, and a breach of this duty makes the premises untenantable, there will be an eviction. *Alger* v. *Kennedy*, 49 Vt. 109; *Sully* v. *Schmitt*, *supra*. Without express provision otherwise the lessor of a house need make no repairs. *Daly* v. *Wise*, 132 N. Y. 306, 30 N. E. 837; *Libbey* v. *Tolford*, 48 Me. 316. But when an apartment is leased, the view of the court in the principal case, that the space outside the inner walls is not included in the leasehold, seems reasonable, as the tenant cannot be considered as absolutely in control of all surrounding walls. It seems proper, therefore, that the duty to prevent rats within such walls from injuring the value of the leasehold should fall on the landlord; and his failure to repair resulting in a nuisance making the premises untenantable, should constitute a tort amounting to an eviction. *Maddon* v. *Bullock*, 115 N. Y. Supp. 723.

LEGACIES AND DEVISES — ABATEMENT — LEGACY CONDITIONED ON RELINQUISHMENT OF CLAIMS AGAINST THIRD PARTIES. — The defendant was entitled to an annuity for life in a trust fund. The testator bequeathed money to the defendant on condition that she relinquish all such rights in favor of a charitable organization. The estate proved insufficient to satisfy all the general legacies. *Held*, that if she elects to take the legacy it is liable to abatement. *Whitehead* v. *Street*, Weekly Notes of Feb. 15, 1913, 40 (Eng., Ch. Div., 1913).

The usual rule is that, in the absence of funds to satisfy the general legacies, they all abate together, even though the widow is among such legatees and is otherwise unprovided for. *Blower* v. *Morrett*, 2 Ves. 419; *In re Schmeder's Estate*, [1891] 3 Ch. 44. *Contra*, *In re Hardy*, 17 Ch. D. 798. Courts and textwriters have repeatedly declared that wherever a legacy is given in lieu of dower or relinquishment of a claim, there is priority. See *Davies* v. *Bush*, Younge 341, 343; *Zaiser* v. *Lawley*, [1902] 2 Ch. 799, 807; THEOBALD ON WILLS, 6 ed., 810; WILLIAMS ON EXECUTORS, 10 ed., 1093. Such has been the law for over two hundred years as to legacies in lieu of dower. *Burridge* v. *Bradyl*, 1 P. Wms. 127. But in England there seems to be no direct authority allowing priority to the legatee where other claims are given up. See

In re Wedmore, [1907] 2 Ch. 277, 280; THEOBALD ON WILLS, 7 ed., 846. In the United States the two are treated alike. *Reynolds* v. *Reynolds*, 27 R. I. 520; *Wood* v. *Vandenburgh*, 6 Paige (N. Y.) 277. If the intention of the testator was to grant a priority this intention should of course govern. See *Appeal of Trustees of University of Pennsylvania*, 97 Pa. St. 187, 200. In the absence of an expressed intent, cases where priority is allowed must be justified by the fiction of a presumed intent. Whether or not the relinquishment would inure to the benefit of the estate, it seems reasonable where the legacy is offered substantially as an equivalent for a right relinquished, to imply a desire to have this legacy paid in full even at the expense of the other legatees. This seems a more satisfactory view than arbitrarily to restrict the dower rule to its facts, as did the principal case. Of course, if the right were to a liquidated sum less than the legacy, the implication would not be justified. *In re Wedmore, supra.* But the principal case is not distinguishable in that way. An intent to give priority can reasonably be implied, it is submitted, wherever a testator conditions a legacy on the relinquishment of a right which is not obviously worth less than the legacy.

LIBEL AND SLANDER — ACTS AND WORDS ACTIONABLE — WORDS ACTIONABLE PER SE. — The defendant published a sensational and improbable story which purported to be a narration by the plaintiff of a personal experience. The plaintiff, a famous author, lecturer, and explorer, had written no such story. In a suit for libel the defendant demurred to a complaint setting out these facts. *Held*, that the demurrer should be overruled. *D'Altomonte* v. *New York Herald Co.*, 139 N. Y. Supp. 200 (Sup. Ct., App. Div.).

It is well settled that to constitute libel there need be no direct statement about the plaintiff. *Archbold* v. *Sweet*, 5 Car. & P. 219; *Maynard* v. *Fireman's Fund Ins. Co.*, 47 Cal. 207. Nor is it necessary that the defendant intend any libel. *Curtis* v. *Mussey*, 6 Gray (Mass.) 261. The publication in the principal case would lead readers to believe that the plaintiff was a writer of stories of doubtful literary merit. *Cf. Archbold* v. *Sweet, supra.* Also, by attributing to the plaintiff the recounting of personal experiences which his associates would know had never happened, the publication imputes to the plaintiff the writing of falsehoods. Words are held to be defamatory if they would be so understood by a particular class of persons. *Martin* v. *The Picayune*, 115 La. 979, 40 So. 376; *Archbold* v. *Sweet, supra.* The principle generally adopted by the courts is that the question must be left to the jury if they might reasonably find that the publication was understood as defamatory. *Dennis* v. *Johnson*, 42 Minn. 301, 44 N. W. 68; *Martin* v. *The Picayune, supra.* In the principal case the jury might reasonably find that the plaintiff's reputation for truth and for being a person of real literary ability was injured among his associates by the publication.

MUNICIPAL CORPORATIONS — FRANCHISES AND LICENSES — ESTOPPEL TO CHALLENGE VALIDITY OF ORDINANCE WHILE ENJOYING FRANCHISE UNDER IT. — A borough by ordinance granted the defendant's assignor the right to use the streets for gas on condition that they supply free gas to churches. The defendant refused to comply with the condition on the ground that the ordinance was void. *Held*, that the validity of the ordinance cannot be attacked by those enjoying a franchise under it. *Bellevue Borough* v. *Manufacturers' Light & Heat Co.*, 238 Pa. St. 388.

If the decision in the principal case is correct, it must be on the ground that since the defendant accepted benefits under the ordinance, it is now estopped to assert its invalidity. It is well settled that public policy prevents the estoppel of a municipal corporation to assert its own lack of power. *Ottawa* v. *Carey*, 108 U. S. 110; *McPherson* v. *Foster Bros.*, 43 Ia. 48. But a